

STIPULATIONS

The stipulations of the parties are listed in the Award of the Special Administrative Law Judge and are adopted by the Appeals Board for this review.

ISSUES

The Special Administrative Law Judge awarded claimant benefits for a twenty-three percent (23%) loss of use of the left leg, arising out of an alleged work-related accidental injury occurring in June through July of 1988. The respondent and insurance carrier appeal from the findings of the Special Administrative Law Judge. The following issues are now before the Appeals Board:

- (1) Whether claimant sustained personal injury by accident arising out of and in the course of her employment with the respondent during the period of June 1988 through July 29, 1988;
- (2) The nature and extent of injury, if any;
- (3) Whether claimant is entitled to temporary total disability benefits and, if so, for what period;
- (4) Whether claimant provided timely written claim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds, as follows:

- (1) The evidence fails to establish it is more probably true than not that claimant sustained injury to her knees as a result of her work for the respondent in the period of June through July 1988. Therefore, the Award of the Special Administrative Law Judge should be reversed.

Although it is true that claimant sustained injury to her left knee sometime during 1988, the overwhelming weight of the evidence indicates the left knee injury occurred on or about October 31, 1988, when claimant was chasing her stepson and heard her left knee emit a crunching sound when she attempted to run over a curb. That is the history claimant provided to her treating physician, Robert L. Eyster, M.D., when she consulted him approximately one week later. After a considerable period of treatment, claimant reported to Dr. Eyster in July 1989 that she wanted to make her knee the subject of a workers compensation claim because she had experienced knee problems while working for the respondent during her period of employment in June and July of 1988.

The Appeals Board finds Dr. Eyster's opinion regarding causation persuasive. Dr. Eyster, a board-certified orthopedic surgeon, believes claimant injured her anterior cruciate ligament and meniscus of the left knee in October 1988, when she was chasing her stepson. This opinion is based upon the nature of the injury and the fact that claimant is unable to identify a specific incident at work where she experienced symptomatology consistent with a meniscus tear. Although claimant may have experienced some discomfort in her knees while working for the respondent, it is more probably true than not those symptoms were related to patella femoral pain, a condition that is unrelated to tears

of the meniscus or ligament but not uncommon to individuals who spend significant time squatting, as did claimant.

Claimant presented the testimony of Ernest R. Schlachter, M.D., to attempt to establish causation. Dr. Schlachter agrees that the majority of meniscus injuries occur as the result of sudden force and internal rotation of the femur while the foot is firmly planted on the ground, and that in most cases the patient can provide a well-defined description of the accident, which claimant cannot. Although Dr. Schlachter believes claimant's left knee was injured while working for the respondent, the claimant did not tell the doctor about any incidents or injuries to the knee occurring after her last day of work on July 29, 1988. Therefore, Dr. Schlachter apparently had no knowledge of the incident where claimant was chasing her stepson and heard the crunching sound emanating from her knee, an incident that the Appeals Board feels is quite significant. Because Dr. Schlachter was not told about the October 1988 incident that first prompted claimant to seek medical treatment for the knee, the Appeals Board is unable to give his opinion regarding causation much weight.

(2) Because the claimant has failed to establish the left knee injury is related to her work, claimant is not entitled to workers compensation benefits in this proceeding and the remaining issues are rendered moot.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey, dated April 20, 1994, should be, and hereby is, reversed, and claimant is denied workers compensation benefits for the injuries alleged herein.

The Appeals Board hereby adopts the order of the Special Administrative Law Judge regarding payment of costs.

IT IS SO ORDERED.

Dated this ____ day of February, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Thomas E. Hammond, Wichita, KS
William L. Townsley, III, Wichita, KS
William F. Morrissey, Special Administrative Law Judge
George Gomez, Director